

FCC Received June 18, 1996 @ 10:20 a.m.
Donna J. Craddock

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

RECEIVED

JUL 5 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re Applications of:	)	WT DOCKET No.:	96-41
LIBERTY CABLE CO., INC.	)	File Nos:	
For Private Operational Fixed	)	708777	WNTT370
Microwave Service Authorization	)	708778, 713296	WNTM210
and Modifications	)	708779	WNTM385
	)	708780	WNTT555
New York, New York	)	708781, 709426,	WNTM212
	)	711937	WNTM212
	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)

Volume: 3

Pages: 162 through 264

Place: Washington, D.C.

Date: June 13, 1996

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:	)	WT DOCKET No.:	96-41
)		
LIBERTY CABLE CO., INC.	)	File Nos:	
For Private Operational Fixed	)	708777	WNTT370
Microwave Service Authorization	)	708778, 713296	WNTM210
and Modifications	)	708779	WNTM385
	)	708780	WNTT555
New York, New York	)	708781, 709426,	WNTM212
	)	711937	WNTM212
	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)
)		

Courtroom 4
FCC Building
2000 L Street, N.W.
Washington, D.C.

Thursday,
June 13, 1996

The parties met, pursuant to the notice of the
Judge, at 10:00 a.m.

BEFORE: HON. RICHARD L. SIPPEL
Administrative Law Judge

APPEARANCES:

On behalf of Liberty Cable Co., Inc.:

ELIOT SPITZER, ESQUIRE
Constantine & Partners
900 Third Avenue
New York, New York
(212) 350-3736

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES (Cont'd.)

ROBERT L. PETTIT, ESQUIRE
MICHAEL K. BAKER, ESQUIRE
BRYAN N. TRAMONT, ESQUIRE
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7019

On Behalf of Time Warner Cable and Paragon Cable
Manhattan Cablevision:

R. BRUCE BECKNER, ESQUIRE
ARTHUR H. HARDING, ESQUIRE
CHRISTOPHER G. WOOD, ESQUIRE
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 939-7913

On Behalf of Cablevision of N.Y., City-Phase I
and Cablevision of Hudson County, Inc.:

CHRISTOPHER A. HOLT, ESQUIRE
JAMES A. KIRKLAND, ESQUIRE
CHRISTOPHER J. HARVIE, ESQUIRE
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 434-7300

On Behalf of Wireless Telecommunications Bureau:

JOSEPH WEBER, ESQUIRE
MARK L. KEAM, ESQUIRE
KATHERINE C. POWER, ESQUIRE
HOWARD DAVENPORT, ESQUIRE
Enforcement Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554
(202) 418-1317

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES (Cont'd.)

On Behalf of Freedom New York, L.L.C.
(Intervenor):

DAVID MARTIN, ESQUIRE
 JEAN KIDDOO, ESQUIRE
 Swidler & Berline, Chartered
 3000 K Street, N.W.
 Suite 300
 Washington, D.C. 20007-5116
 (202) 424-7834

I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
(None)

E X H I B I T S

IDENTIFIED RECEIVED REJECTED

(None)

Hearing Began: 10:00 a.m. Hearing Ended: 12:20 p.m.

10:00 a.m.

I think if I add the issue, I'll certainly have to address those issues -- when I say the issues, I mean I have to address the factual information that is being relied upon by Liberty if I'm concluding that that information doesn't carry the day. I don't want to do it in a short trip manner. On the other hand, if I -- certainly if I reject the issues, the same reason applies. And I don't want to

1 have an order that's going to have to be partially in camera
2 or partially filed under sealed and partially public. So
3 I -- I'm asking I guess for some guidance on this from you
4 all in terms of how you feel about it.

5 Let me tell you where I'm coming out on this. I
6 don't see anything even in the agreements that would warrant
7 there be given -- if push came to shove, I don't see
8 anything in the agreements that would warrant them not being
9 made public in this case. The reason I say that is because
10 these are -- they are historical in nature at this point
11 really. They just recite what has happened. And although
12 there's a lot of detail in them and for purposes of the
13 issue of control which we're concerned about here today, of
14 course there's very important detail in them.

15 But nonetheless, the basic framework of the
16 information is on public record already with the 10-Ks of
17 the SEC and whatever has come out even in this proceeding.
18 So now that same thought would carry over with respect to
19 what's going to be discussed today. We're obviously going
20 to talk about some of these facts in a very candid matter.
21 And I don't see any reason why this transcript can't be put
22 onto public record. Now, that's what I intend to do.

23 If they want -- if anybody wants relief from -- so
24 where I'm coming out -- so you know exactly where I'm coming
25 from, first of all, with respect to anything that I write on

1 this motion to add the issues, I expect to use all the
2 information as fully and completely as I feel is necessary
3 to do justice to the issue that I'm writing. And I intend
4 to put that on the public record; that is, my final
5 memorandum, opinion and order I intend to have put on the
6 public record without any changes.

7 I don't intend to unnecessarily put the agreements
8 on the public record. And I would treat those exactly as we
9 have agreed to do under the order, under the ground rules
10 that we've been using here unless there's a reason shown as
11 to why they have to commit to evidence in a hearing context
12 or of an evidentiary reason. That's a whole different
13 consideration. I'm just talking about right now on this
14 preliminary motion practice that we're engaged in here.

15 Secondly, with respect to today's proceeding, I
16 don't -- I expect the transcript of this proceeding, today's
17 proceeding, that is, to be put right on the public record
18 without any changes, without any -- well, not changes, but
19 without any -- any isolation of any of the portions for
20 purposes of confidentiality. Now, of course, there will be
21 a period of time -- you get delivery of this transcript in a
22 matter of days. And I would certainly give you time to
23 address this in a motion or somehow or other bring this to
24 my attention. But I want to let you know where I'm coming
25 out up front on this.

1 So anyway, that's point number one. Now,
2 secondly, with respect to discovery update, who can give me
3 some information on the discovery update? I guess Mr.
4 Spitzer probably --

5 MR. SPITZER: Sure. Absolutely, Your Honor. I
6 guess there are two issues that merit attention. First,
7 there was the question of phone memoranda from Mike
8 Lemphuel. And as I think Mr. Lemphuel testified in his
9 deposition, there are no such formal memoranda. We have
10 gone through the totality of the records once again. There
11 simply are not any documents that are memos of Mike Lemphuel
12 to the file saying I had a conversation with Joe Smith at
13 Liberty with respect to this issue. They simply do not
14 exist.

15 There are -- and again, I say this without waiving
16 any privileges -- one or two memoranda that Mike Lemphuel
17 has to the file that recount conversations that he had with
18 folks at Gettysburg. I think there's one, actually. I'm
19 not sure if there is another -- which again I'm not in the
20 position to make irrelevance determination for you, but it's
21 simply not pertinent to anything in this litigation. But
22 there is one such memorandum, one such memorandum. But it
23 has nothing to do with a conversation with anybody at
24 Liberty. So that was the first inquiry -- the specific
25 inquiry that you had made, I believe.

1 With respect to a privilege log, we can have that
2 done by Monday. We've gone through all the documents; we
3 have sorted through them; we are generating a privilege log
4 and we will produce it on Monday.

5 JUDGE SIPPEL: All right. How extensive is that
6 log going to be? Can you anticipate --

7 MR. SPITZER: In terms of the number of documents?

8 JUDGE SIPPEL: Yes, what are we talking about?

9 MR. SPITZER: It's -- you know, that's whether I
10 have three, four, five inches of documents that we've gone
11 through.

12 JUDGE SIPPEL: Well, no, your list isn't going to
13 be that big.

14 MR. SPITZER: No, no. I'm talking about the
15 documents that are at issue are about this thick. The list
16 I have no idea, simply no idea. It's being generated as we
17 speak by some attorneys and paralegals up in New York. I've
18 gone through all the documents and -- you know.

19 JUDGE SIPPEL: That's not an --

20 MR. SPITZER: There ain't nothing there as they
21 say.

22 JUDGE SIPPEL: The size doesn't seem to be an
23 over-imposing burden. We'll get to see these out.

24 MR. SPITZER: It will be completed by Monday at
25 2:00.

1 JUDGE SIPPEL: All right. Then again, as I've
2 indicated in my order to go back to that, I really want
3 counsel to be working on this -- I mean, try and work this
4 through as best you can before having to come to me with
5 motions. Maybe after seeing the -- after they see the
6 index, I'm hoping that there's going to be some obvious
7 types of documents that are just not going to, you know --
8 there's not going to be any fight over.

9 MR. SPITZER: Well, Your Honor, I -- again, I'm --
10 Mr. Beckner and I tend to disagree on some of these matters.
11 But with respect to the assertion of privilege, I don't
12 think that there is any question about the legitimacy of the
13 assertion of privilege here. I mean, this is a law firm and
14 these are documents generated by lawyers.

15 JUDGE SIPPEL: I understand that. I'm talking --
16 I'm saying --

17 MR. SPITZER: It's not third party documents.

18 JUDGE SIPPEL: No, I understand that. But I'm
19 saying that putting that aside, I mean, there's going to be
20 certain documents if it's -- if it's just simply -- and this
21 is very important I understand. But I mean, if it's simply
22 exchanges of theories between attorneys while working on the
23 case, I don't want to spend any time having to get into
24 that. It's a question of the documents that were seen or
25 used by the people at Liberty who were doing the work.

1 The transactions that we're talking about, that's
2 the kind of document that I'm -- that, you know, may be a
3 subject of -- I would like to see whether or not there's
4 been any waiver or -- I mean I would be willing to look at
5 it to see if there's been any waiver or if Mr. Beckner can
6 come up with some theory as to why the privilege shouldn't
7 apply. I'm not looking for work is what I'm trying to say.
8 I really am not. So if, Mr. Beckner, you see that there's
9 something in there that based on what I'm telling you think
10 I probably wouldn't want to see anyway, let's not, you
11 know -- let's not ask for it.

12 MR. BECKNER: Well, no. We certainly wouldn't
13 take up your time with a request for, you know, an internal
14 form memorandum on legal theories and those kind of
15 privileged kinds of documents.

16 JUDGE SIPPEL: Well, I just wanted to express my
17 approach on this. All right. Then this will also cut down
18 on the number of papers that we'll have to deal with. So
19 it's going to make it easier on both sides, or less
20 burdensome I should say. That's all that I have. Today the
21 procedure is going to be that there's a ten minute
22 presentation up front by the three major participants. And
23 then I have a series of questions. And again, I've given
24 you as much advanced notice as I can in terms of what my
25 concerns are.

1 MR. SPITZER: Your Honor --

2 JUDGE SIPPEL: Well, I was just going to say,
3 before I could -- that's all I want to say. So if you have
4 a preliminary -- some preliminary questions, go ahead.

5 MR. SPITZER: The question, it relates to the
6 first issue that you raised, Your Honor, which is the
7 confidentiality issue. And I suppose I'm a bit concerned
8 about beginning with the presumption that this record of
9 today's conversation or discussion with Your Honor will
10 necessarily end up in the public record because I think the
11 mutual understanding had been that with respect to documents
12 and discussions pertaining to the transaction where there
13 would be reference to information in the transaction
14 documents that had been deemed confidential, any transcripts
15 generated from the discussion would also be deemed
16 confidential and not be subjected to public scrutiny which
17 is why I think Mr. Beckner said he told his client he could
18 not attend today

19 Now, I know this is an issue we have to discuss.
20 Obviously, you've stated that you have a different
21 perspective on it. But in terms of moving forward today,
22 I'm just wondering if we could somehow agree that this --
23 the transcript of today's discussion will be kept sealed
24 until we have an opportunity to resolve these issues.

25 JUDGE SIPPEL: I think that's what I said. I

1 mean, that's what I tried -- I just wanted you to know up
2 front what I feel about it. Yes?

3 MS. KIDDOO: Your Honor, I would like to echo what
4 Mr. Spitzer said. Obviously, the contracts have been made
5 available subject to very strict proprietary treatment and
6 that was the basis upon which we agreed to make them
7 available. It would be, with all due respect to Your
8 Honor's position, certainly my client's view that disclosure
9 of the details of these contracts would be harmful to their
10 position in the marketplace in New York.

11 That having been said, we also agree with Your
12 Honor that you can't resolve this issue without knowing and
13 being able to base your decision upon the structure of the
14 transaction and the relationship between the parties. And
15 we have no objection. In fact, our first opposition was
16 filed on the public record. And it described in some detail
17 the structure of the transaction. And we don't have a
18 problem with that.

19 What we do have a problem with, and I expect Mr.
20 Beckner will cite to very particular provisions in the
21 contract today in this -- in this hearing, and I think that
22 that is the concern that we have. To the extent that Your
23 Honor needs to in his decision obviously relate to the
24 structure of the transaction and perhaps cite to paragraphs
25 of the provision which are, in fact, in the Commission's

1 records, that's fine. It would be really quoting of them
2 and describing in detail particular kinds of financial
3 relationships and that sort of thing that raises the
4 concern.

5 So I think that your need to be able to in your
6 order relate to the structure of the transaction is
7 something that doesn't cause us any problems. And I think
8 if to the extent that you can do that in a more general way
9 and cite to particular provisions if you need to, they are
10 on the Commission's -- in the Commission's record in a
11 proprietary sealed way I think at this point. And if
12 they're not, we can make them.

13 JUDGE SIPPEL: Well, you mean the -- well, the
14 agreements are with the Commission -- I believe they --
15 well, I don't know that myself for a fact. They are -- the
16 agreements themselves that have been produced and have been
17 given to me are with the secretary's office in a sealed
18 context or --

19 MS. KIDDOO: I don't believe Mr. Baker did that.
20 He filed them with you, Your Honor, and sent copies to Mr.
21 Webber at the Commission and then to counsel for the other
22 parties. I don't believe they were actually filed. We can
23 certainly do that if you think that's important for the
24 Commission's record.

25 JUDGE SIPPEL: Well, I do. And I -- but they only

1 need to be filed in the -- in the redacted version. I think
2 the redactions are so -- to me, I mean, a redaction that was
3 done was so simply done, not simply done, but was done so
4 selectively. And really, we're just talking about a couple
5 of dollar figures that were taken out. I don't see any
6 reason why I need to clutter up the Commission's files with
7 the, you know --

8 MS. KIDDOO: No, I was talking about filing the
9 redacted versions in the record if you think as a procedural
10 matter that's where they need to be for you to be able to
11 rely on them. But I would not propose to file the
12 unredacted versions.

13 JUDGE SIPPEL: Yes, then that -- yes. To get back
14 to what you're suggesting, yes, file them with the
15 secretary's office, but as sealed documents, you know, under
16 the normal confidentiality procedures that you'd be filing
17 because there's no question that there's going to be
18 reliance on rulings throughout -- from here on out as far as
19 this issue is concerned. And whether it's on the record or
20 off the record or somehow or another, those agreements have
21 to be with the Commission files on this.

22 All right. Well, I just -- you know, I don't want
23 to spend a lot of time debating my reasons for it. But I
24 want to let you know how I feel about it. Now, it doesn't
25 mean I'm going to treat them any differently. I mean, I'm

1 going to treat those agreements as I agreed to do it, as I
2 signed an order requiring me to do it. And I'm going to --
3 this transcript will be treated that way, also, until there
4 is a resolution to the contrary.

5 I just have a strong feeling about wanting to put
6 things on the public record unless there's a very good
7 reason as to why they shouldn't be. That's all. All right.

8 MR. KIRKLAND: Your Honor, I'm sorry. My name is
9 Jim Kirkland. I'm here for Cablevision of New York City,
10 Phase I.

11 JUDGE SIPPEL: Good morning, Mr. Kirkland.

12 MR. KIRKLAND: And one question I was unable to
13 answer on a conference call on Tuesday was whether
14 Cablevision had any of its own pending discovery issues that
15 needed to be resolved. And I've since had the opportunity
16 to consult with Mr. Holt. And the only pending request
17 which we have is for -- it came up in the context of the
18 Peter Price deposition where Mr. Holt asked counsel for
19 Liberty to try to locate whether or not one of the exhibits
20 which appeared to refer to attachments, if those attachments
21 existed and if so, to produce them.

22 And also, I believe there was a question raised
23 about whether this was a subsequent version of an earlier
24 document and whether earlier versions existed. And
25 yesterday, I spoke with Mr. Spitzer and he agreed that they

1 were going to undertake that search. And assuming that that
2 search was completed and we get some written confirmation as
3 to the results or the production of any documents that are
4 located, we don't have any issues right now that are pending
5 or that require the attention of the Court.

6 JUDGE SIPPEL: Okay.

7 MR. SPITZER: Your Honor, I think I can respond
8 quickly. The -- to put in context, and I don't need to
9 belabor the record, this was a chart that was appended to a
10 letter and the question was since there had not been a
11 staple attached, whether that chart in fact was the appended
12 chart that was referred to in the letter. And by all
13 evidence that we've been able to discern, it is the chart.
14 It is the only version of the chart and there has been a
15 search that has been done. We've requested that it be done
16 again. But there's been no evidence that there is any other
17 version of that chart or that there is any other chart that
18 was appended to that letter.

19 JUDGE SIPPEL: All right.

20 MR. SPITZER: And this is a chart that listed
21 buildings and dates and -- it was the subject of -- it was
22 an exhibit at both Mr. Price's deposition and several of the
23 other depositions, as well.

24 JUDGE SIPPEL: All right. Well, this being
25 pursued then, I'm satisfied. Thank you for bringing it to

1 my attention, Mr. Kirkland.

2 MR. KIRKLAND: Thank you, Your Honor.

3 JUDGE SIPPEL: That's all I have then on the
4 preliminaries. Does anybody else have anything preliminary
5 they want to raise? Having -- all right, then we're going
6 to move on to the purpose for today's conference and that is
7 the -- a presentation in questions with respect to the
8 requested added for issue. I think since the burden to the
9 extent that there's a burden in this kind of procedure would
10 lie with the parties seeking the issues, I'd ask Mr. Beckner
11 and Mr. Webber to go first -- or Mr. Beckner to go first and
12 Mr. Webber since -- well, then Mr. Webber to follow up with
13 other questions, qualifications, how the Bureau sees the
14 issue as framed by Mr. Beckner with your variations.

15 And then Mr. Pettit, Ms. Kiddoo, Mr. Spitzer,
16 however you want to break your time up. But I want to try
17 to keep it as close to ten minutes so by -- it's 10:25 now.
18 By 11:00 by that clock in the back of the room, you know, I
19 expect we'll be moving into the question phase of this. All
20 right. Do you want to start, Mr. Beckner?

21 MR. BECKNER: Certainly. Thank you, Your Honor.
22 Just for the record, Bruce Beckner for Time Warner Cable of
23 New York City and Paragon Cable Manhattan. The first thing
24 I want to say is there's a risk that all of us will fall
25 into the temptation of deciding the merits of the question

1 itself in the course of looking at the materials that have
2 been supplied by Liberty, that is, in deciding whether or
3 not there's been a change of control of the licenses or
4 whether or not RCN Freedom is a real party interest in
5 interest in the applications that are before the presiding
6 Judge or whether or not Liberty, in fact, failed to update
7 the Commission as required by 165.

8 That's not our job here today. Our job is simply
9 to determine I believe whether or not there are substantial
10 and material questions as to those issues. And the reason
11 that I raise the point is because of the interest -- slow
12 disclosure of information from Liberty and Freedom on this
13 certainly encourages the idea that maybe the whole thing can
14 be decided on the merits on the basis of a few documents
15 they've chosen to show us. And I would suggest that that's
16 not the case.

17 Substantively, before we get into the details, I
18 think what we have to remember is the -- the old story about
19 the blind men and the elephant. And each blind man grabbed
20 one part of the elephant, you know, the tail, the trunk,
21 whatever, and comes to a different and wrong conclusion
22 about what it is that he's looking at, the point of the
23 story being is that you have to look at the whole elephant
24 to realize it's an elephant.

25 In this case, what you have to look at is what I

1 would call an organic entity that's created by these
2 documents. It is not simply Bartholdi Cable Company
3 formerly known as Liberty Cable Company. It is not simply
4 Freedom New York Limited Liability Company. It is a web of
5 relationships among these entities that is created by these
6 documents and perhaps by others that we haven't seen. And
7 the reason that I bring that point up is that it's that web
8 of relationships that's got to be examined to answer the
9 question of whether or not there's been a change of control
10 in Liberty's existing licenses or whether or not the real
11 party in interest in the applications that are before the
12 presiding Judge is in fact someone other than what is now
13 known as Bartholdi Cable Company.

14 In simple terms, what the old Liberty Cable
15 Company appears to have done is -- is to have cut up its
16 business into pieces. And it appears to have done that for
17 I think two reasons: 1) to bring a new participant into the
18 business which is RCN, Peter Cuit (phonetic) and Sons, and
19 2) to insulate the valuable and unique parts of its business
20 which are the exclusive contracts that have to provide
21 multi-channel video programming to residents of apartment
22 buildings in New York from any adverse consequences that
23 might flow from the outcome of the proceeding we're in
24 today.

25 The way that we did this was they took the --

1 the -- what I'm going to call the end-user part of the
2 business; that is, the part that involves the electronic
3 delivery of the programming within a building to the people
4 living in each apartment unit in the building --

5 JUDGE SIPPEL: Is that the asset --

6 MR. BECKNER: That's the assets that were sold to
7 this company called Freedom New York Limited Liability
8 Company; Freedom New York, L.L.C. as they call it. So they
9 took that part of the business including the exclusive
10 contracts which Liberty has to provide that service to those
11 buildings and they sold that to Freedom New York. Let's
12 call it Freedom New York. Now, the other part of the
13 business, of course, is the means by which the programming
14 which is distributed through a -- in essence, a cable
15 network within a particular building, the means by which the
16 programming gets to that building.

17 And that means, of course, as we know is either --
18 directly -- is directly or indirectly a microwave or a fast
19 path which is licensed by the FCC. And I say directly or
20 indirectly because, as we know, Liberty is feeding some
21 buildings by means of a coaxial cable that interconnects
22 with another building that they serve by microwave.

23 The microwave part of the business, the license
24 part of it, they have at least on paper kept to themselves.
25 And that's what they've told you that they've done. They've

1 kept that to themselves so far. And for the moment, let's
2 just grant -- assume the truth of that statement.

3 JUDGE SIPPEL: There are no facts that you can
4 point to at this point that shows it to be otherwise, are
5 there?

6 MR. BECKNER: Well, I'm going to get to that.

7 JUDGE SIPPEL: All right.

8 MR. BECKNER: I'm going to get to that in the
9 detail part. I just -- the third part of the business is
10 the marketing or the sale, the acquisition of new products
11 for Liberty -- for Freedom as it now is to sell its video
12 programming service. And that business, that function
13 appears to be -- and it's not clear because we don't have
14 all the documents, but it appears to be handled by something
15 called Liberty Video Enterprises which is referred to in
16 these documents as LIVE.

17 So that's how the business has been broken up.
18 And of course, even that break up is not clean in the sense
19 that there are interlocking ownership relationships.
20 Bartholdi has a roughly 20 percent interest in Freedom New
21 York. RCN has I believe about ten percent interest in
22 Liberty Video Enterprises so that the -- in an economic and
23 financial sense, they all have a stake and a link in what
24 happens to each other and in particular, in the ultimate
25 success of -- of the effort to sell video programming to

1 people living in apartment buildings in New York; in other
2 words, to continue selling to the existing customers and to
3 add new customers in new buildings.

4 Now, the answer to your question you asked me a
5 minute ago, and that is, was the business really sold or
6 not. What I want to focus on is really to aspects of that
7 question which are set up in these agreements. And I want
8 to remind you that the agreements only provide the form of
9 what's happened. They don't provide the substance. I mean,
10 we know from the Telephone and Data Systems decision, for
11 example, that -- you know, that the Court reversed the FCC
12 for having simply looked at contracts without looking at
13 what really was happening on the street.

14 And in this situation where even the form of the
15 arrangement is so complex as this is, and when there are so
16 many interrelationships, it seems to me that it's impossible
17 to really know what's going on and who is controlling what
18 without finding out what's happening on the street; that is,
19 without deposing people and seeing what they're doing. I
20 mean, in particular, we have one agreement, this
21 subcontractor agreement, which didn't even exist at this
22 time this transaction was closed and was signed after Time
23 Warner raised the question of changing control before the
24 presiding Judge.

25 So that brings up two questions: 1) does this

1 describe what's happening? And if so, what was happening
2 before this document was signed. And secondly, can this
3 document be trusted at all or is it totally self-serving in
4 the sense that it was created to reflect the outcome of
5 unanimous before the presiding Judge.

6 Well, the actual purchase agreement has two
7 interesting features that -- that I believe indicate very
8 strongly that there is not control in any practical sense by
9 Bartholdi of these licenses. And again, I want to remind
10 you that I don't have to prove today that what I'm saying is
11 true. All I have to do is show you that there is
12 substantial evidence that it -- that it is true. I think
13 these documents do that.

14 First, the hardware that is used to send and
15 receive the microwave gives us great call that -- I think
16 it's called the retained assets. So it's called different
17 things in different rooms -- retained equipment, I'm sorry.
18 It's called retained equipment. Well, the retained
19 equipment has already been paid for in this asset purchase
20 agreement. And the reason that we know that is because
21 Liberty -- or Bartholdi agrees to turn it over to -- without
22 further consideration, to agree to turn that equipment over
23 to Freedom New York whenever Freedom New York converts a
24 particular building without paying any further money.

25 And that's -- the section numbers are really into